

अण्डमान तथा



निकोबार राजपत्र

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अण्डमान तथा निकोबार प्रशासन

ANDAMAN AND NICOBAR ADMINISTRATION

सचिवालय

SECRETARIAT

NOTIFICATION

Port Blair, dated the 22nd February, 2005

No. 24/2005/F. No. 3-175/99-Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 read with Notification No. LR-1 (59)/55 dated 13th December, 1955 of the Government of India, Ministry of Labour, the Lieutenant Governor (Administrator), Andaman and Nicobar Islands hereby publishes the following Award given by the Labour Court, Andaman and Nicobar Islands in the matter of an Industrial Dispute between the Divisional Forest Officer, South Andaman and its workman Shri Israil Dung Dung, DRM, over the alleged termination of his services referred to the Labour Court for adjudication vide Administration's Notification No. 3-175/99-Labour, dated 6.12.1999.

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT

ANDAMAN AND NICOBAR ISLANDS

Present :- Shri Brindaban Mandal, Presiding Officer

Labour Court, Port Blair

I. D. Case No. 48 of 1999

Shri Israil Dung Dung..... First party

Versus

The Divisional Forest Officer, Second party

South Andaman

Thursday the 22nd day of July, 2004

AWARD

1. This scheduled reference under section 10 (1) read with section 12 (5) of the Industrial Disputes Act, 1947 and also read with Notification No. LR-1 (59) /55 dated 13th December, 1955 of the Government of India, Ministry of Labour has been made by the Lt. Governor (Administrator) of Andaman and Nicobar Islands after being satisfied that the matter under reference is an industrial dispute and in the schedule, the reference has been made to adjudicate upon "whether the action of the Divisional Forest Officer, South Andaman in terminating the services of Shri Israil Dung Dung, D. R. M., is legal and justified ? If not, what relief the concerned workman is entitled to?"
2. As per written statement of demand of first party, he was working as DRM under the DFO, South Andaman from September, 1992 upto 1st May, 1998 with artificial break and he was not allowed to work for a further spell. That the sole intention/motive behind the issue of repeated orders of appointment was with a view to bypass the provision of section 25-B of the Industrial Disputes Act, which amounted to unfair labour practice. That the first party was retrenched immediately after completion of 240 days and he had been given employment after the artificial break only to deprive him from getting the benefit of temporary status scheme. The first party claims that he worked for more than 240 days in 12 calendar months and he sought for protection under section 25-B of the I. D. Act treating his services as continuous and the first party claims that the second party department violated the provision of section 25-B, 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. That the first party claims that though he was

working since 1992 onwards he was not given with the proper treatment though the regular appointment should be given on the basis of seniority and the petitioner was not given due weight for the same as assigned by the law and the senior workers who completed work for more than 240 days are not called to the duty though junior workers working for 6 to 7 months are given regular appointments overlooking the long period of service of the senior workmen. Ultimately, the workman has claimed for his reinstatement into the work with full back wages from the date of his termination/retrenchment from the work.

3. The second party submitted that the Andaman and Nicobar Administration has referred the matter in file No. 3-176/99 –Labour dated 26.11.1999 for adjudication. That the first party was employed as and when required for seasonal work of the second party and the engagement of the workman depends on the quantum, location and seasonality of forestry works governed by working plan prescription and budgetary provisions so that no arbitrariness is done to any workman. That the scheme 'Casual Labourer (Grant of Temporary Status and Regularisation) of Government of India, 1993' introduced by memorandum No. 51016/2-90-Estt © dated 10.9.1993 made applicable to casual labourers in employment of the employer on the date of above order and those were rendered a continuous service of at least one year and the grant of temporary status is one time settlement as on the date of issue of the aforesaid official memorandum. That the first party workman was not in employment on the date of issue of the above referred office memorandum and was not eligible for grant of temporary status. That the services of the first party were discontinued as per seasonality and recommend of work and there was no malafide intention of non-payment of compensation and if required the second party agrees to pay the compensation payable on the date of his disengagement.

Decision with reasons

4. Admittedly the first party was engaged under the second party as a daily rated mazdoor since 1992 to 1st May, 1998. It is in the record that the second party did not allow the first party workman to continue in service after an artificial break in service for a further spell and if the situation is going on, he would be prejudiced from having the relief as per provision of Industrial Disputes Act.
5. Perused the evidence, oral and documentary, on record. It reveals in record that due to non-filing of sufficient documents viz. the Muster Roll or any other relevant document, my learned Predecessor in office being dis-satisfied, was pleased to hold the order of terminations of service of the first party, to be legal and justified. The first party being aggrieved by and dissatisfied with the said award, preferred a Writ Petition No. 124 of 2001 before the Hon'ble High Court, Circuit Bench at Port Blair and the Hon'ble Mr. Justice Pinaki Chandra Ghosh by order dated 10-1-2004 was pleased to pass the order mentioning "this matter is remanded before the said Labour Court only to come to a conclusion on the basis of the records in respect of total days of work done by the petitioner on the basis of the records, i.e. Muster Roll and the documents, to be produced by the Parties". Thereafter the case was returned to this court for further adjudication. During hearing of the proceeding, the second party has filed the Muster Roll. Besides the Muster Roll no other document has been filed by the respective parties.
6. The representative appearing on behalf of the petitioner first party argued that as the termination in question was not permissible as per provision of section 25-F of the ID Act, and as the second party did not send any notice before termination and/or as the second party did not pay or offer one month's salary as per provision of section 25-F of ID Act, according to the latest verdict of the Hon'ble Apex Court, the petitioner first party should be reinstated. In reply, the opposite party by filing the written argument argued that the first party was not engaged in between May, 1993 to May, 1994 and from August, 1994 to April, 1995, from April 1995 to January, 1996, from May, 1996 to January, 1997, from April 1997 to October 1997 and he was lastly engaged in April, 1998 for 10 days. But in reply, the first party after drawing my attention over the relevant documents viz. Muster Roll argued that as the second party could not adduce any satisfactory documentary evidence to rebut the contents of the first party in relation to his work or more than 240 days at a stretch and before the alleged retrenchment as the second party did not comply with the provision of section 25-F and 25-H of the ID Act, the petitioner must be reinstated for the ends of justice.
7. Perused the evidence, oral and documentary on record and also perused the entire record with meticulous care and also perused the Muster Roll filed this day, which is marked as Ext. A series. On perusal of the same I got materials to say that the first party rendered services for more than 240 days continuously in 12 calendar months i.e. from September, 1992 to May 1993. Unfortunately, the second party by adducing any evidence could not rebut the contents of the first party in relation to his service of 240 days at a stretch. Resultantly, I do hold that the first party is entitled to get the relief as sought for. In view of my above observation and discussion I am of the opinion that the second party was not right in retrenching the first party from his services and the first party is entitled to be reinstated into his service with immediate effect. But as the petitioner was Daily Rated Employee, I think the first party is not entitled to any back

wages during the intervening period, but he should be deemed to be in continuous service for other purposes, as if there had not been any retrenchment.

Hence,

Awarded

that the action taken by the Divisional Forest Officer, South Andaman in terminating the service of the petitioner Shri Israil Dung Dung, Ex-Daily Rated Mazdoor is neither legal nor justified. The first party workman Shri Israil Dung Dung is entitled to be reinstated into his service with immediate effect. But in view of my above discussion and observation, the first party workman is not entitled to get any back wages during the intervening period he remain unemployed till date, but he should be deemed to be in continuous services for other purposes, as if there had not been any disengagement.

Let this Award be forwarded to the Lt. Governor (Administrator), Andaman and Nicobar Islands for favour of his information and due publication in the official gazette.

Given under my hand and seal of the court this 22nd day of July, 2004.

Typed at my dictation & corrected by me.

22.7.2004.

P.O.

Sd/-
(Brindaban Mandal)
Presiding Officer,
Labour Court,
Andaman and Nicobar Islands.

By order of the Lieutenant Governor,

Sd/-

(M. K. Kunhi Mohammed)
Assistant Secretary (Labour).

